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Aug 10 1903

Supreme Court, New York Co.

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The National Phonograph Company,

86

against

Henry Durant Cheever, Executor
&c. of Charles A. Cheever, Dec'd.

Affidavit and Order to Show Cause for Interpleader and Proof of Service.

GEORGE MURRAY BROOKS,

Attorney for defendant,

No. ~~11 BROADWAY~~ 43 Wall Street,

Borough of Manhattan, NEW YORK CITY.

Due service of a copy of the within affidavit and order is hereby admitted this 7 day of August, 1903.

Filed Aug 15 1903

King-Bowman M'f'g. Co., Stationers, 260-266 West Broadway, N. Y.

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Aug 10 3

Supreme Court, New York Co.

The National Phonograph Company,

against

Henry Durant Cheever, Executor
&c. of Charles A. Cheever, Dec'd.

Affidavit and Order to Show Cause for Interpleader and Proof of Service.

GEORGE MURRAY BROOKS,

Attorney for defendant,

No. ~~111 BROADWAY~~ 43 Wall Street,

Borough of Manhattan, NEW YORK CITY.

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SUPREME COURT, NEW YORK COUNTY.

- - - - - - - - - - - - - - - - - - - -

The National Phonograph Company, :
Plaintiff, :

against :

Henry Durant Cheever, as Executor of the Last Will and Testament of Charles A. Cheever, Deceased, :
Defendant. :

- - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK :
: SS
COUNTY OF NEW YORK :

JOSEPH E. CAVANAUGH, being duly sworn, says, that he is over twenty-one years of age; that on the 7th day of August, 1903, at No. 100 Broadway, in the City of New York, he served the annexed affidavit and order to show cause on J. Adriance Bush, attorney for the plaintiff herein, by showing said order to show cause to said J. Adriance Bush and at the same time delivering to and leaving with him a copy of said order and affidavit; and that on the same day, at No. 140 Nassau Street, in said City, he served said order to show cause on the New York Phonograph Company by showing said order to James L. Andem, Secretary of said Company, and at the same time delivering to and leaving with him a copy of said affidavit and order to show cause.

Deponent further says that he knew the persons served as aforesaid to be respectively the attorney for the plaintiff and the Secretary of the New York Phonograph Company.

Sworn to before me this :
10th day of August, 1903. :

Joseph E Cavanaugh

Chester V. Ballister
Notary Public Kings Co
Certificate filed in N.Y. Co. 39

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Fol. 1.

SUPREME COURT, NEW YORK COUNTY.

- -x

The National Phonograph Company,
Plaintiff,

against

Henry Durant Cheever, Executor of the Last Will and Testament of Charles A. Cheever, Deceased,
Defendant.

- -x

On the annexed affidavit of Henry Durant Cheever, verified the 7th day of August, 1903, upon the complaint

"2. in this action, a copy whereof is hereunto annexed, upon all papers and proceedings made, had or served in this action, and on motion of George Murray Brooks, attorney for the defendant above named, it is

ORDERED, that the above named plaintiff, or its attorney, and the claimant named in said affidavit, "New York Phonograph Company", show cause before one of the Justices of this Court at a Special Term, Part 1 thereof, to be held in the County Court House, in the Borough of Manhattan, City of New York, on the 10th day of August, 1903, at 10:30 A. M., or as soon thereafter as counsel can be heard, why an order should not be made and entered in this action substituting the said New York Phonograph Company

"3. as defendant in this action and discharging the said Henry Durant Cheever, Executor of the Last Will and Testament of Charles A. Cheever, Deceased, from all liability either to the plaintiff herein or to the said New York Phonograph Company, upon the said Henry Durant Cheever, Executor as aforesaid, the defendant above-named, delivering the possession of the property for the recovery of which this action is brought to such person as the court directs, and upon such terms as to costs and delivery of the possession of

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the property, as may be just, and directing that the defendant so substituted in this action have twenty days from and after the service of a supplemental or amended complaint on the substituted defendant within which to answer or demur thereto, or make such motion with respect thereto
"4. as such substituted defendant may be advised, and for such other and further order and relief in the premises as to the court may seem just and proper.

And in the meantime and until the hearing and determination of this motion, let all proceedings herein on the part of the plaintiff, or its attorney, be and they are hereby stayed.

Sufficient reason appearing therefor, service hereof on the attorney for the plaintiff and on the said New York Phonograph Company on or before the 8th day of August, 1903, shall be deemed sufficient notice of motion.

Dated, at the County Court House, the 7th day of
"5. August, 1903.

M. Dugro
.....

Justice of the Supreme Court
of the State of New York.

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Fol. 1.

SUPREME COURT, NEW YORK COUNTY.

- x

The National Phonograph Company,
Plaintiff,

against

Henry Durant Cheever, Executor of the Last Will and Testament of Charles A. Cheever, Deceased,
Defendant.

- x

COUNTY OF NEW YORK, SS:

HENRY DURANT CHEEVER, being duly sworn, says:

That on the 19th day of May, 1903, deponent appeared in this action by his attorney, George Murray Brooks; that

"2. the complaint herein was served on the 10th day of June, 1903, and that the time for deponent to answer said complaintwill expire on the 11th day of August, 1903.

That this action is brought by plaintiff to recover from the defendant the possession of Certificates numbers 126, 127 and 145 representing 1017 shares of the capital stock of New York Phonograph Company which were issued January 30th, 1891, to Richard Townley Haines, Treasurer, as will more fully appear by reference to the complaint herein, a copy of which is hereunto annexed.

That deponent is the Executor of the last will and testament of Charles A. Cheever, deceased, who died at Far Rockaway in the County of Queens and State of New York, on the 2nd day of May, 1900, leaving a last will and testament, which was thereafter, and on the 6th day of July,

"3. 1900, duly proved in the office of the Surrogate of the County of Queens in the State of New York; that in and by said last will and testament, the testator named the deponent as executor of said last will and testament, and

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that letters testamentary were duly issued to him on the 6th day of July, 1900, and that he duly qualified and entered upon the discharge of his duties as such Executor.

"4. That the said Charles A. Cheever had in his possession, at the time of his death, 1017 shares of the capital stock of New York Phonograph Company, represented by certificates as follows:-

Certificate No. 126 for 250 Shares,
" " 127 " 17 Shares, and
" " 145 " 750 Shares,

all of which certificates were issuedon the 30th day of January, 1891, in the name of Richard Townley Haines, Treasurer, and none of them was endorsed and said cer-

"5. tificates came into deponent's possession as such Executor, together with the papers and property belonging to the said Charles A. Cheever, deceased, and deponent has been unable, after diligent search, to find among the papers of the said Charles A. Cheever anything indicating the ownership of the shares represented by said certificates, and has no information in the premises except what is contained in the said complaint in this action and in the notice from New York Phonograph Company hereinafter mentioned.

That New York Phonograph Company, hereinafter mentioned, as deponent is informed and verily believes, is a domestic corporation.

Deponent further says that New York Phonograph Company claims and demands from him possession of the said

"6. certificates sought to be recovered in this action, which claim or demand is based upon the ground that the shares represented by said certificates were and are part of the treasury stock of said New York Phonograph Company and belong to said company, and deponent has been served with a notice, dated July 20th, 1903, signed by James L. Andem, Secretary of New York Phonograph Company, claiming the

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possession of said certificates and demanding that deponent should deliver the same to said New York Phonograph Company which notice is hereto annexed and made part hereof.

"7. Deponent further says that the claims of plaintiff and of said New York Phonograph Company have been made without collusion of deponent with them or either of them; that deponent has no interest in the certificates of stock named except to deliver the same to the person or corporation rightfully entitled thereto; that deponent is ignorant of the merits of the respective claims and cannot safely determine to which of said claimants the said certificates of stock should be delivered, and is ready and willing to deliver the same to such person as the Court may direct upon being discharged from all liability to either of the

"8. claimants.

That no previous application has been made herein, and that the reason why deponent asks for the annexed order to show cause is that the time to answer the complaint herein will expire on the 11th day of August, 1903, and deponent is advised that this motion should be made before the time to answer said complaint expires. Deponent therefore asks that an order be made herein substituting New York Phonograph Company as defendant in this action, in place of said deponent, the defendant above named, and discharging deponent as such defendant from liability to either the National Phonograph Company, the plaintiff, or said New York Phonograph Company, on his delivering the

"9. possession of the said certificates to such person as the Court directs, and directing such other and further order as may be just and proper; and that deponent may be allowed his costs of this motion.

Sworn to before me this
7th day of August, 1903.

Joseph E Cavanaugh
Notary Public
New York Co.

H Durant Clarence

Fol. 1.

SUPREME COURT, NEW YORK COUNTY.

- - - - - - - - - - - - - - - - - - -x

The National Phonograph Company, :

against : Trial Desired in the County of New York.

Henry Durant Cheever, Executor of the Last Will and Testament of Charles A. Cheever, Deceased, :

- - - - - - - - - - - - - - - - - - -:-

The plaintiff appears by J. Adriance Bush, its attorney, and upon information and belief respectfully shows to this Court as follows, to wit:

1. That the National Phonograph Company, the plaintiff herein, is a foreign corporation organized under the laws of the State of New Jersey on or about the 27th day of July, 1896, and still existing and having its principal office and place of business in West Orange in the State of New Jersey, and had and has obtained from the Secretary of the State of New York the authorization provided by the laws of said State in compliance with the provisions of Sections 15 and 16 of the General Corporation Law of the State of New York.

"2.

11. That the North American Phonograph Company hereinafter mentioned was at all the times herein mentioned down to on or about the 21st day of August, 1894, a corporation duly organized under the laws of the State of New Jersey, having its principal office and place of business at Jersey City in said State of New Jersey and transacting business generally in and throughout the United States of America. That some time in the year 1894 a Bill of Complaint was filed in the Court of Chancery of New Jersey for the appointment of a Receiver for said The North American Phonograph Company, and that said The North American Phonograph Company was adjudged insolvent by a decree of the said Court, and

"3.

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John R. Hardin, Esq., of the State of New Jersey was duly appointed the Receiver of said corporation, in said suit.

III. That New York Phonograph Company hereinafter mentioned was at all the times hereinafter mentioned and still is a domestic corporation organized under the laws of the State of New York, having its office or principal place for

"5. the transaction of business at Tarrytown in the State of New York.

IV. That the defendant is the Executor of the last will and testament of Charles A. Cheever, deceased, who died at Far Rockaway in the County of Queens and State of New York on or about the 2nd day of May, 1900, leaving a last will and testament which was thereafter and on or about the 6thday of July, 1900, duly proved in the office of the Surrogate of the County of Queens in the State of New York. That

"6. in and by said last will and testament the testator named the defendant herein, said Henry Durant Cheever, as Executor of said last will and Testament and that letters testamentary were duly issued to him on or about the 6th day of July, 1900 and that he duly qualified and entered upon the discharge of his duties as such executor and is still acting as such, never having been discharged, and said Letters Testamentary still remaining unrevoked.

V. That on or about the 30th day of January, 1891, said New York Phonograph Company delivered to defendant's testator said Charles A. Cheever ten hundred and seventeen

"7. (1017) shares of the capital stock of said New York Phonograph Company, full paid and unassessable, of the par value of one hundred dollars ($100) each share and represented by certificates as follows:

Certificate No. 126 for 250 shares;
Certificate No. 127 for 17 shares; and
Certificate No. 145 for 750 shares;

making 1017 shares in all, as above, all of which certificate

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were issued in the name of one Richard Townley Haines,
"8. Treasurer, said Richard Townley Haines being then the Treasurer of said New York Phonograph Company, and which stock so delivered to said Charles A. Cheever was the property of said The North American Phonograph Company and was by said New York Phonograph Company delivered to said Charles A. Cheever in trust for the uses and benefits of said The North American Phonograph Company and which stock was do delivered to said Charles A. Cheever and was received by him upon the express understanding that said Charles A. Cheever should immediate-
"9. ly deliver said stock as he had been directed by The North American Phonograph Company to John Robinson and Samuel C. Blodget, Jr., and their successors, as Trustees, said 1017 shares of stock to be thereafter held by said Trustees and their successors under and pursuant to the terms of a certain agreement made between said The North American Phonograph Company and said Robinson and Blodget, Trustees, in the words and figures following, to wit:

WHEREAS, THE NORTH AMERICAN PHONOGRAPH COMPANY has heretofore transferred, or is about to transfer or cause to be transferred, to JOHN ROBINSON and
10 SAMUEL C.BLODGET, JR., to be held by them as Trustees, certain shares of the capital stocks of various Phonograph Companies amounting in the aggregate to thirteen thousand nine hundred and thirty-six shares and more specifically enumerated and described in the schedule hereunto annexed.

"NOW, THEREFORE, THIS AGREEMENT, made, in consideration of the sum of one dollar and of other valuable consideration, between the said North American Phonograph Company and the said John Robinson and Samuel C.
"10. Blodget, Jr., and this declaration made by the said Robinson and Blodget, WITNESSETH:-

"That the said thirteen thousand nine hundred and thirty-six shares of stock, or so many thereof as may be transferred to said Robinson and Blodget are to be held by them in trust for the following uses and purposes, namely:

"To collect and receive all dividends thereon, or on so many thereof as may from time to time be remaining in their hands, and pay the same over as received
"12. to the said North American Phonograph Company; to sell or endeavor to sell, the said stocks in such amounts, at such time or times, and for such price or prices as they may be directed in writing by the Board of Directors of the said North American Phonograph Company; and

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to pay over to the said company all sums realized from any sales or sales so directed to be made.

"IT BEING UNDERSTOOD that the trust hereby declared and created shall terminate on the twenty-sixth day of March, one thousand nine hundred and three, unless
"13. sooner terminated by the consent of the said Trustees and the said Company, and that upon the termination of the said trust either by limitation or by consent as aforesaid, the said Trustees shall retransfer to the said Company all of the said stocks than remaining in their hands unsold.

"Either of the said Trustees, or any Trustee substituted as hereinafter provided, may resign from the trust hereby created upon giving thirty days notice in writing to the said North American Phonograph Company,
"14. and upon the resignation of any such Trustee or in the event of his death or incapacity to act the Board of Directors of said Company may appoint a successor to such Trustee, and any Trustee or Trustees so appointed shall have the same powers and duties as if originally named herein.

"IN WITNESS WHEREOF the said North American Phonograph Company has caused these presents to be executed and its corporate seal affixed pursuant to a resolution of its Board of Directors, and the said John
"15. Robinson and Samuel C. Blodget, Jr., have hereunto set their hands and affixed their seals this eighteenth day of February, one thousand eight hundred and ninety.

"The North American Phonograph Co.,
"(L.S.) "By Jesse H. Lippincott, Prest.

"ATTEST:
"Geo. H. Fitzwilson,
"Secy.

"(John Robinson)(L.S.)
"C. Walcutt. (Samuel C. Blodget,Jr.,)(L.S.)

"16. "S C H E D U L E.

"New York	(Not found)	Phonograph	Company	1725 Shares
Georgia,		"	"	385 "
Florida		"	"	135 "
Texas		"	"	545 "
Minnesota		"	"	510 "
Missouri		"	"	735 "
Alabama		"	"	255 "
Colorado and Utah		"	"	360 "
Kentucky		"	"	600 "
Tennessee		"	"	855 "
New jersey		"	"	735 "
New England,		"		2001 "
East Pennsylvania,		"	"	890 "
Ohio		"	"	2750 "
Kansas		"	"	313 "
Old Dominion,		"	"	571 "
Mississippi and Louisiana		"	"	571 "
		Total		13936 "

"18 VI.- That said Charles A. Cheever received said stock upon the express trust and agreement as aforesaid and

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further upon the express promise to said The North American Phonograph Company that he would receive said stock represented by said certificates and immediately deliver the same to said Trustees, to be held by them under said agreement. That said Charles A. Cheever, neither at the time of receiving said stock nor at any other time, had any right, title or interest in the same or any part thereof or right to the posses-
"19 sion thereof other than for the purposes aforesaid and under the agreement aforesaid and for the purpose of depositing the same as aforesaid with said Robinson and Blodget and their successors as Trustees.

VII. That the said Charles A. Cheever in violation of said trust and agreement and without the knowledge or consent of said The North American Phonograph Company, failed to de-
liver said stock to said Robinson and Blodget and their suc-
cessors as Trustees as aforesaid, but retained the same in his
"20 possession and continued to hold possession thereof down to the time of his death, when it came into the possession of the defendant herein upon his succeeding to the possession of the personal property of said Charles A. Cheever, at the time of his death and at and after his appointment as Executor as afore-
said.

VIII. That in and by said agreement between said The North American Phonograph Company and said John Robinson and Samuel C. Blodget, Jr., Trustees, it was among other things
"21. provided that said 1017 shares of stock were to be held by said Robinson and Blodget in trust to collect and receive any divi-
dends thereon and pay the same over as received to The North American Phonograph Company, to sell or endeavor to sell said stock in such amounts, at such time or times andfor such price or prices as they might be directed in writing by the Board of Directors of said The North American Phonograph Company, and to pay over to said company the sums realized from any sale or sales so directed to be made, and it was further provided that

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"22. the trust thereby declared should terminate on the 26th day of March, 1903, unless sooner terminated by consent of the said Trustees and said The North American Phonograph Company, and that upon the termination of said trust either by limitation or by consent the said Trustees should retransfer to the said The North American Phonograph Company all of the stock remaining in their hands unsold.

IX. That on or about the 15th day of December, 1891,
"23 and pursuant to the terms and provisions of said trust agreement, said Samuel C. Blodget, Jr., having become incapacitated to longer act as Trustee under said agreement, a vacancy occurred therein, whereupon one Michael W. Nolan was, by action properly taken on the part of the parties thereto, duly appointed a Trustee under said agreement and thereupon entered upon the discharge of his duties in the place and stead of said Samuel C. Blodget, Jr., since which date the duties under and pursuant to said trust have devolved upon and have been per-
"24 formed by said John Robinson and Michael W. Nolan as Trustees.

X. That on or about the 15th day of January, 1896, in said action in the Court of Chancery of the State of New Jersey in which Walter Cutting and others were complainants and said The North American Phonograph Company defendant, said John R. Hardin, Receiver, having duly qualified and entered upon the discharge of his duties as such Receiver as aforesaid, on the 15th day of January, 1896, was ordered and directed by said Court to advertise and sell to the highest bidder certain property and stocks of said The North American
"25. Phonograph Company, and among other things all the right, title and interest that said The North American Phonograph Company then, and at the time of the appointment of said Receiver, had in said 1017 shares of stock of New York Phonograph Company hereinbefore set forth, whether then in the possession of said Receiver or in the possession of said Robinson and Blodget or

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their successors as trustees, or elsewhere, and that such proceedings were thereupon had under and in pursuance of said order directing such sale that on or about the 8th day of February, 1896, the 1017 shares of stock aforesaid, together with other property of said The North American Phonograph Company then in the hands of said Receiver were offered for sale by said Receiver at public auction and knocked down to and purchased by the plaintiff herein; and said John R. Hardin, Receiver, made to the plaintiff a bill of sale of said 1017 shares of the capital stock of said New York Phonograph Company and of all the right, title and interest therein and thereto which said The North American Phonograph Company had at the time of the appointment and qualification of said Receiver, and that plaintiff thereupon became, and ever since has been, the lawful owner and holder of said 1017 shares of the capital stock of New York Phonograph Company and of all the right, title and interest of The North American Phonograph Company therein and thereto, subject to the rights created by said trust agreement as aforesaid.

"26.

"27.

XI. That neither said John Robinson and Samuel C. Blodget, Jr., Trustees, nor John Robinson and Michael W. Nolan, Trustees, as aforesaid, nor any or either of them, made any sale or disposition of any of the stock deposited under said trust agreement, or of said 1017 shares of stock of said New York Phonograph Company, or any part thereof, on or before the 26th day of March, in the year 1903, as therein provided, and that by reason of such failure the National Phonograph Company by reason as aforesaid on or about said 26th day of March, 1903, immediately on the termination of said agreement, became entitled to the immediate delivery and possession of said 1017 shares of stock.

"28.

That immediately upon becoming entitled to the possession of said 1017 shares of stock as aforesaid said The Nation-

"29.

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al Phonograph Company demanded the delivery of the same to it by said Trustees and thereupon ascertained for the first time that the same had never been delivered or come into the hands of said Trustees but that the same had been wrongfully withheld by said Charles A. Cheever as aforesaid during his lifetime and since the death of said Charles A. Cheever had continued to be wrongfully withheld from the possession of said
"30. Trustees by the defendant in this action.

That thereupon plaintiff, said The National Phonograph Company, demanded of said defendant that he should immediately deliver said stock either to plaintiff as the lawful owner thereof, or to said Trustees so that the same could be by them delivered to plaintiff, but that the defendant has refused and still wholly neglects and refuses so to do.

XII. That plaintiff is the sole and lawful owner of said 1017 shares of stock represented by the respective certificates aforesaid and of the whole thereof and is entitled
"31. to the immediate delivery thereof, but that the same is unlawfully withheld and detained from plaintiff by the defendant.

W H E R E F O R E, plaintiff demands judgment against the defendant for the possession of and for the immediate delivery by the defendant to it, said plaintiff, of the said 1017 shares of stock of said New York Phonograph Company, represented by certificates No. 126 for 250 shares, No. 127 for 17 shares and No. 145 for 750 shares, and each and all of said certificates and each and every one of said shares
"32 of stock, or that said defendant be directed to make similar delivery of said stock and certificates to said John Robinson and Michael W. Nolan, Trustees, as aforesaid, if it shall be held that said Trustees alone are entitled to the immediate delivery thereof, and that plaintiff may have such other or

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further legal or equitable relief in this action, or both, as to the Court may seem just, together with the costs of this action.

J. ADRIANCE BUSH,
Plaintiff's Attorney,
Office and Post Office Address, 100 Broadway,
(Manhattan), New York.

"33. STATE OF NEW YORK, :
BOROUGH OF MANHATTAN, : SS:
COUNTY OF NEW YORK, :

J. ADRIANCE BUSH, being duly sworn, says, that he is the attorney for the plaintiff in this action; that he has read the foregoing complaint and knows the contents thereof and that the same is true to his own knowledge except as to the matters which are therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the reason why this verification is not made by said plaintiff is that said plaintiff is a foreign corporation
"34. and that none of its officers are now within the City and County of New York, which is the City and County in which deponent resides and has his place of business; that the grounds of his belief as to all matters not stated on his knowledge are, statements made to deponent by Mr. John R. Hardin, Receiver of The North American Phonograph Company, and by Hon. Howard W. Hayes, general counsel for the plaintiff in this action, together with inspection of various papers, agreements and copies of agreements submitted to deponent by said counsel prior to the preparation of the complaint herein, and also statements made to deponent by John Robinson and Michael W. Nolan, Trustees under the agreement of trust mentioned in said complaint, also, the examination of thecomplaint
35. answer, affidavits, &c., now filed or about to be filed in the

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United States Circuit Court for the Southern District of New York in an action in which New York Phonograph Company is complainant and The National Phonograph Company is defendant.

Sworn to before me this ;
9th day of June, 1903. ; J. Adriance Bush.

George W. Thomas,
Notary Public, New York Co.

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Incorporated under the Laws of N[illegible] York. [illegible]apital, $2,500,000.

NEW YORK PHONOGRAPH COMPANY

BOARD OF TRUSTEES:
DANIEL F. LEWIS,
JAMES SLATER,
FREDERICK G. BOURNE,
JOHN P. HAINES,
WILLIAM FAHNESTOCK
H. M. FUNSTON,
JAMES L. ANDEM.

Exclusive Licensees under the Phonograph patents of Thomas A. Edison for the State of New York..

OFFICERS:
JOHN P. HAINES, PRESIDENT.
H. M. FUNSTON, VICE-PRESIDENT.
WILLIAM FAHNESTOCK, TREASURER.
JAMES L. ANDEM, SECRETARY.

No. 140 NASSAU STREET,

New York, July 20th 1903

H. Durant Cheever, Esq.,

No. 253 Broadway, New York.

Dear Sir:

Pursuant to instructions from the Board of Trustees of this Company, I hereby make formal demand upon you for the return to this Company of the certificates of stock described in the following resolution adopted by them July 17, 1903:-

"RESOLVED; That the Secretary of the Company is hereby instructed to make formal demand upon H. Durant Cheever, Esq., and upon George M. Brooks, Esq., his attorney, for the return to the Company of Certificates Nos. 126, 127 and 145 for 1017 shares of Treasury Stock, now in their possession, issued January 30, 1891, to Richard Townley Haines, Treasurer, and belonging to this Company.

Yours truly,

James L. Andem,
Secretary.

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CABLE ADDRESS "AUSTERITY"

J. ADRIANCE BUSH,
COUNSELLOR AT LAW.

No 100 BROADWAY.
AMERICAN SURETY BUILDING.

NEW YORK, August 12. 1903

My dear Sir: Referring to the proposed order in case of National Phonograph Company against Henry D. Cheever as Executor &c. which is to be presented for signature this morning I have to say that the plaintiff will be entirely satisfied with any Trust Company which you may designate as the depositary of the stock in suit

Yours respectfully

J. Adriance Bush
Attorney for Plaintiff.

Hon. Edward A. McCall.

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CO 1903-N 261

Supreme Court, New York Co.

The National Phonograph Company

86

against

Henry Durant Cheever, as Executor of the Last Will and Testament of Charles A. Cheever, Deceased.

Order of Interpleader.

GEORGE MURRAY BROOKS,

Attorney for deft.

No. ~~XX BROADWAY~~ 43 Wall St.

Borough of Manhattan, NEW YORK CITY

One service of a copy of the within order is hereby admitted this 16th day of August 1903

Adrian H. Joline

Filed Aug 15 1903

Atty for Plaintiff.

Louis Heller

50 Atty for N.Y. Pltf's

King-Bowman M'f'g. Co., Stationers, 260-266 West Broadway, N. Y.

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SIRS;-

PLEASE take notice that a proposed order, of which within is a copy, will be presented to Hon. Edward A. Mc Call, one of the Justices of this Court, for signature and settlement, at Special Term, Part 1, of this Court, at the County Court House, New York City, on August 12th, 1903, at 10:30 o'clock A. M.

Dated August 10th, 1903.

Yours &c.,

George Murray Brooks,
Attorney for deft.

To

J. Adriance Bush, Esq.,
Attorney for plff.

Louis Hicks, Esq.,
Attorney for New
York Phonograph Company.

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Fol. 1

At a Special Term of the Supreme Court of the State of New York, Part I thereof, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York, on the 13 day of August, 1903.

Present:

HON. EDWARD A. McCALL,

Justice.

"""""""

plaintiff, and upon the said New York Phonograph Company, the claimant herein, and after hearing George Murray Brooks, of Counsel for the defendant, in support of the motion, and John C. Coleman, Esq., of Counsel for the plaintiff, and Louis Hicks, Esq., of Counsel for the said New York Phonograph Company, appearing and consenting thereto:

N O W, on motion of George Murray Brooks, attorney for the defendant, it is

O R D E R E D, That the said New York Phonograph Company be, and it hereby is, substituted as defendant in this action in the place and stead of the said Henry Durant Cheever, Executor of the last Will and Testament of Charles A. Cheever, deceased;

AND IT IS FURTHER ORDERED, that the defendant above named, Henry Durant Cheever, Executor as aforesaid, deliver the possession of Certificate No. 126 for 250 shares of the capital stock of New York Phonograph Company, Certificate No. 127 for 17 shares of the capital stock of said New York Phonograph Company, and Certificate No. 145 for 750 shares of the capital stock of said New York Phonograph Company, which Certificates were issued on January 30, 1891, in the name of Richard TownleyHaines, Treasurer, and are the property for the recovery of which this action is brought, to the Clerk of this Court and of the County of New York to be held by ~~said~~ him

to await the ~~final determination of this action and to be~~

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further order or

7 ~~then delivered as the final~~ judgment ~~or order herein shall direct;~~ of this Court.

AND IT IS FURTHER ORDERED, That upon the delivery of the possession of the said Certificates as aforesaid, the said Henry Durant Cheever be, and he is hereby, discharged from any and all liability either to the plaintiff, The National Phonograph Company, or to the said claimant, New York Phonograph Company;

AND IT IS FURTHER ORDERED, That the plaintiff, within twenty days after the entry, and service of a copy,

8 of this order, serve upon said New York Phonograph Company an amended or supplemental complaint, and that said New York Phonograph Company be, and it is hereby required to serve an answer or demurrer thereto, or make such motion with respect thereto as such substituted defendant may be advised, within twenty days after the service of said amended or supplemental complaint, as aforesaid.

AND IT IS FURTHER ORDERED, That if the said New York Phonograph Company shall fail to appear and defend this action within twenty days after the service of said

9 amended or supplemental complaint, as aforesaid, the plaintiff may apply ex parte for an order directing the delivery of the possession of the said Certificates for 1017 shares of the capital stock of New York Phonograph Company to the plaintiff;

AND IT IS FURTHER ORDERED, That if the plaintiff shall fail or neglect to serve its amended or supplemental complaint, as herein directed, that then, and in that event,

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the said New York Phonograph Company may apply upon notice for an order dismissing the complaint in this action, and directing the delivery of the possession of said Certificates for 1017 shares of the capital stock of New York Phonograph Company to the said claimant, New York Phonograph Company.

Enter

Edward Ellis Carr
J.S.C.

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